

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 483 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 : No

GOKULBHAI CHHAGANBHAI

Versus

STATE OF GUJARAT

Appearance:

MR NAGIN N GANDHI for the appellant
Mr.S.R.Divetia,LAPP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 17/02/97

ORAL JUDGEMENT (N.J.Pandya,J).

The accused-appellant along with 3 others was facing charge of murder under Sec.302 read with Sec.34 as also 114 of IPC in Sessions Case No.178 of 1988 before the learned Sessions Judge, Surat. Accused nos.2,3 & 4 came to be acquitted and accused no.1, the present

appellant, came to be convicted by the learned Judge, by judgment dated 22-6-1989. He was convicted for offence under Sec.302 IPC and was awarded life imprisonment.

2. If we read charge Exh.6, page 156, incidentally it may be mentioned that the accused-appellant does not stand charged individually for offence under Sec.302 and he is charged for offence under Sec.302 read with Sec.34 only. Further, the story of the prosecution is that of the four accused, two had caught hold of the deceased Bhagwanbhai to facilitate blow being given by accused no.1. If this is the prosecution case, and if the persons who have facilitated the crime, are given benefit of doubt, as rightly submitted by L.A. Mr.Gandhi, there is hardly any reason for not giving benefit of doubt to the present accused-appellant.

3. The only thing that could be said about the conviction judgment is that there was one witness, Bhikhabhai, p.w.8, exh.29 page 102 of the paper book before whom the deceased, according to the prosecution, had made oral dying declaration. In his statement, according to witness Bhikhabhai, the deceased has referred to accused no.1 by name as having given knife blow. Two blows were given to deceased Bhagwanbhai, one on the right side near 8th rib but the second was given in the right of the amblicus side and it had gone deep and as a result, outer lower of stomach was torn and abdominal muscles were cut and even small intestine was damaged. It would naturally lead to considerable bleeding. But surprisingly, blood was not found either at the place where the incident had happened, according to the prosecution, or at the place where the injured fell down and made said dying declaration before witness Bhikhabhai.

4. The incident happened on 16-6-1988 at about 9.00 p.m. near Rupam Talkies. That Cinema Hall is situated near cross-roads of Salabatpura in the City of Surat. Having received injuries, he moved about a furlong from Maharaja Cinema in the canteen of which, the deceased was working and according to the prosecution, the deceased ran to that place and fell down at the canteen.

5. The Doctor, who has been examined to prove the post mortem note, has submitted in his cross examination that there would be profuse bleeding looking to the injuries. The said deposition is at exh.30, page 105.

6. As if this is not enough, the testimony of Bhikhabhai p.w. 9 does not inspire confidence. The

panchnama at page 118 of scene of offence (Exh.34) offers explanation for absence of blood. The explanation is to the effect the incident happened on the previous night and panchnama was drawn on the next day, and it being a busy thoroughfare, the blood was wiped out.

7. About Article 5, the knife, said to have been wielded by the present-appellant also, there is considerable confusion. The FSL report mentions that blood of human origin was found on it but it was insufficient for determining the group. The recovery panchnama indicates that there was no blood on the knife as it was freshly sharpened. On top of it, the Investigation Officer Mr. Parmar at page 132, states that 4 knives were recovered but only 2 were sent for FSL examination. In fact, the FSL has received only one. From the deposition of the eye witness, it is obvious that at best, there would be 2 knives because, of the 4 accused, two were not said to be carrying knife. At least the witnesses had not seen them either carrying or using the knife. On the contrary, said two persons were holding the deceased making it possible for accused no.1 to give fatal blows.

7. The fact was that blood was there at the site as indicated by one of the witnesses at page 100 and the relevant part is at page 102. Name of this witness is Shankarbhai p.w.7, exh.28. He could not see the incident because he was attending to his customers who had come there to drink locally made cool drink like soda water, lemon water etc. However, immediately after the incident when he went away to his home, he had seen a pool of blood and after 12 at midnight also he had come out as people had gathered there and at that time also he had seen pool of blood. The panchnama of scene of incident is totally silent about it. It on the contrary gives explanation. In this background, when we hear the said witness Bhikhabhai in his deposition, he says that he had to put handkerchief on the injured part of the deceased, but it was not blood stained. The whole story becomes very shaky and it is not possible to hold that the prosecution case put through the witnesses, could inspire confidence. Their very credibility, in our opinion, is doubtful and therefore, the benefit of doubt given to the other accused should be extended to the present accused-appellant also. Accordingly, the appeal is allowed. The accused is given benefit of doubt. He is acquitted and he be set at liberty forthwith, if not required for any other purpose. The order of conviction passed by the trial Court is set aside.

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